

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

TAMALPAIS BANCORP,  
f/k/a EPIC BANCORP,

No. C 11-00076 JSW

Debtor.

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LINDA S. GREEN, in her capacity as Chapter  
7 trustee for TAMALPAIS BANCORP, f/k/a  
EPIC BANCORP,

**ORDER GRANTING MOTION  
FOR LEAVE TO FILE MOTION  
FOR RECONSIDERATION AND  
VACATING ORDER OF  
WITHDRAWAL**

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its capacity as receiver  
for Tamalpais Bank,

Defendant.  
\_\_\_\_\_

Now before the Court is the motion of Plaintiff Linda S. Green (“Trustee”) for leave to file a motion for reconsideration of the Court’s Order Granting Motion to Withdraw Reference to Bankruptcy Court entered on March 21, 2011. Pursuant to Civil Local Rule 7-9, the Court hereby GRANTS Trustee’s motion for leave to file a motion for reconsideration, and hereby VACATES the Order of withdrawal.

In the Order of withdrawal, the Court determined that mandatory withdrawal of the reference to the bankruptcy court is not appropriate because defendant Federal Deposit Insurance Corporation (“FDIC”) “failed to identify any novel issues of federal non-bankruptcy

law that are likely to arise in the adversary proceeding.” (Doc. no. 12 at 5.) The Court determined that permissive withdrawal was appropriate because “Trustee’s pre-petition, TSA-based claim to the Refunds is a non-core claim under binding precedent.” (Doc. no. 12 at 7.) Having determined that Trustee’s claim was non-core under *Security Farms v. Int’l Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999 (9th Cir. 1997), the Court entered the Order of withdrawal.

Trustee now seeks reconsideration of the Order of withdrawal based on the “emergence of new material facts” pursuant to Civil Local Rule 7-9(b). Specifically, Trustee has demonstrated that FDIC filed a proof of claim in the Debtor’s bankruptcy case on March 23, 2011. (Doc. no. 15-3, Request for Judicial Notice, Ex. B.) In the proof of claim, FDIC states among other things that it “has a claim against Bancorp, in an unliquidated amount, stemming from any consolidated federal and state tax returns filed, or to be filed, by Bancorp on behalf of the Bank for which a refund is due.” (*Id.* at 5.) On March 30, 2011, Trustee filed an Amended Complaint in which Trustee objected to FDIC’s proof of claim under section 502 of the Bankruptcy Code. (Doc. no. 14 ¶¶ 51-56.)

FDIC does not dispute that it filed a proof of claim but contends that it filed the proof of claim “to preserve FDIC-R’s rights in the unlikely event the refunds are determined property of the bankruptcy estate.” (Doc. no. 17 at 6.) FDIC argues that the Court should deny reconsideration because “the determination of whether a claim is core or non-core is not dispositive in determining whether permissive withdrawal is warranted.” (*Id.* at 7.) In granting FDIC’s motion for withdrawal, however, the Court considered that “‘characterization of the claims as core or non-core [under 28 U.S.C. § 157(b)] is useful before considering the [Sec. Farms] factors.’” (Doc. no. 12 at 5 (quoting *Hawaiian Airlines, Inc. v. Mesa Air Group, Inc.*, 355 B.R. 214, 223 (D. Haw. 2006).)

28 U.S.C. section 157(b)(2) provides a non-exhaustive list of core proceedings which bankruptcy judges may hear and determine. Trustee’s objection to FDIC’s proof of claim constitutes a core proceeding under section 157(b)(2)(C), which defines as a core proceeding any “counterclaim[] by the estate against persons filing claims against the estate.” *See In re*

1 *Ray*, 624 F.3d 1124, 1130 (9th Cir. 2010). *See also In re G.I. Industries, Inc.*, 204 F.3d 1276,  
2 1280 (9th Cir. 2000) (recognizing bankruptcy court's core jurisdiction over proof of claim  
3 based on state law contract issue).

4 Trustee has demonstrated that the emergence of new material facts warrants  
5 reconsideration of the Court's Order of withdrawal. Civ. L.R. 7-9 (b)(2). Trustee's objection to  
6 FDIC's newly filed proof of claim constitutes a core proceeding. Having considered the close  
7 relationship of issues raised in FDIC's proof of claim with the issues to be decided on Trustee's  
8 objection and claim for declaratory relief seeking determination of the parties' rights in the tax  
9 refunds, the Court determines that the core nature of Trustee's objection and the interests of  
10 judicial efficiency and uniformity of bankruptcy administration weigh against withdrawal of the  
11 bankruptcy reference of Trustee's action. *Sec. Farms*, 124 F.3d at 1008. The Court determines  
12 that allowing this case to proceed in the bankruptcy court will not result in duplicative efforts or  
13 inconsistent results because the Court has not ruled on dispositive motions in this matter and  
14 has not issued case management or scheduling orders. The Court therefore VACATES the  
15 Order Granting Motion to Withdraw Reference entered on March 21, 2011, and hereby  
16 DENIES FDIC's motion to withdraw reference to Bankruptcy Court upon reconsideration.

17 **CONCLUSION**

18 For the reasons set forth above, Trustee's motion for leave to file a motion for  
19 reconsideration is GRANTED. (Doc. no. 15.) The Order of withdrawal entered March 21,  
20 2011 is hereby VACATED. The Clerk shall transfer the file to the Bankruptcy Court for the  
21 Northern District of California.

22 **IT IS SO ORDERED.**

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24 Dated: April 19, 2011

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE